REMARKS

Reconsideration and withdrawal of the examiner's rejections under 35 USC §§ 112 and 103(a) is respectfully requested in view of the above amendments and the following remarks. The applicant would like to thank the examiner for his time and kind cooperation in this matter.

35 USC 103(a)

The examiner asserts for purposes of claim rejections under 103(a), the term "a dispersed phase including a first component, the first component being capable of chemically reacting with a second component that is different from the first," as recited in claim 1, is reasonably construed to mean the "discontinuous or external" phase of an emulsion wherein any ingredient present in the dispersed phase is reasonably construed to be the "first component".

In response applicants agree in part that "discontinuous phase of an emulsion" may represent the claimed "dispersed phase". However, contrary to the examiner's assertion, "external phase" is defined as a dispersion medium otherwise known as continuous phase, and therefore the skilled person would understand "external phase" is not the same as the claimed dispersed phase.

The examiner asserts that the "first component," as recited in claim 1, is reasonably construed to be capable of reacting with any other component "second component," that is present in the composition or external to the composition, i.e., the first component may reasonably react with a second component, e.g., hair or skin, at the point of use of the composition; or may be capable of reacting with a carrier in the composition or different ingredient in the composition.

In response, applicants respectfully submit that "objects external to the composition", such as "skin or hair" cannot represent either a first of second component because as the examiner admits, the skin or hair is external to the composition. The claimed composition requires the first and the second component to be a part of the composition as denoted by the preamble "comprising".

The examiner asserts that the term "during cleansing and/or skin treatment by a user" as recited in claim 1 is construed to constitute intended use, which is not being given patentable weight as the claimed invention is directed to a composition.

In response, applicants respectfully submit to the contrary that the claimed phrase "during cleansing and/or skin treatment by a user" defines the conditions whereby the first component reacts with the second component when dispersed or dissolved in water. This is different from merely representing an intended use. This is a case where the patentee may be his own lexicographer. MPEP 2111.01 IV.

The examiner asserts that the term "substantially anhydrous carrier" as recited in claim 1, is reasonably construed to mean any carrier that is not 100% water. The term "carrier" given its broadest reasonable interpretation is construed to include any solvent, or diluent, or vehicle that is not comprised of 100% water.

In response, applicant respectfully submit that this is not the proper interpretation and call the examiners attention to the definition of "substantially anhydrous carrier" in the instant specification on page 3, lines 22-25.

Substantially anhydrous as used herein means that the carrier is sufficiently free of water to prevent substantial solvation or reaction with the first component. Substantially anhydrous as used herein can also mean that the carrier contains water but that the water is isolated or otherwise prevented from solvating or reacting with the first component.

The examiner asserts that the term "first component is substantially unsolvated in the carrier", as recited in claim 1, is reasonably construed to mean any first component that is completely present or contained in the dispersed phase, wherein the dispersed phase is dispersed within an oil phase by means of an emulsifying agent.

In response, applicants respectfully submit to the contrary, that the examiner cannot ignore the integral claim limitation "unsolvated" in formulating a proper prima facie case under § 102 or § 103 with respect to the claim element "first component is substantially unsolvated in the carrier".

The examiner asserts that the term "an organophilic particle", as recited in claim 1, is reasonably construed to mean any ingredient that is present in the dispersed phase in the form of a particle, i.e., not completely dissolved/solubilized in the dispersed phase, including powders, semi-solids, and colloidal particles (Steadman's Medical Dictionary 1995; page 1259).

In response, applicants respectfully submit to the contrary that the examiner cannot ignore the integral claim limitation that the particle must be organophilic as opposed to not organophilic, e.g., hydrophilic.

§ 103 Art Rejections

The examiner has rejected claims 1-6, 9, 11 and 13-17 as being unpatentable over Beerse, et al., (US Patent 6,294,186), in further view of Puvvada, et al., (US Patent 5,952,286) and Zhang, et al., (US Patent 6,780,826). Applicants respectfully traverse this rejection.

In addition to the erroneous interpretation of selected claim elements noted above, applicants respectfully submit that the skilled person would understand that "salicylic acid" does not react with "sodium chloride" under the required claim conditions for same reasons discussed below for Leyland, et al.

Beerse, et al., relates to an antimicrobial composition comprising a benzoic acid analog and a dermatologically acceptable carrier for the benzoic acid analog when complexed with metal wherein the composition has a pH of about 1-7 and is substantially free of a specific organic acid. Applicants respectfully submit that a proper prima facie case under § 103 is not been made out with respect to Beerse, et al., because Beerse at least does not disclose a composition where at least two different components of the dispersed phase can react with each other when blended with water according to claim 1 among other reasons noted above. Applicants further note that PVP of Beerse, Col. 51, e.g. 16-18, is identified as Luviskol K17 which is soluble in the aqueous example and therefore does not exist as a particle per se (see attached BASF data sheet).

Puvvada, et al., relates to lamellar phase compositions comprising defined surfactants and liquid crystalline phase structurants. Zhang, et al., discloses a rinse-off personal care composition containing hydrophobic benefit agents and particles which deposit on the skin to enhance skin shine. Applicants respectfully submit that the combination of Puvvada, et al., and Zhang, et al., do not remedy the deficiencies of Beerse, et al., for the reasons discussed above.

The examiner has rejected claims 1-6, 9 and 11-17 under 103(a) as being unpatentable over Leyland (GB 2,242,358), in view of Diec, et al., (US Patent 6,607,733) and Zhang, et al., (US Patent 6,780,826). Applicants respectfully traverse this rejection.

Leyland, et al., discloses a cosmetic formulation comprising separate water and oil emulsion and carrier phases discussed in detail in applicant's prior response. In addition to the erroneous claim interpretation discussed above and arguments of record, it is respectfully submitted that a proper prima facie case under § 103(a) is not made out with respect to Leyland, et al., and claim 1 because Leyland, et al., does not disclose two components dispersed in the same phase that can react with each other when dispersed or dissolved in water and where that phase is stabilized by organophilic particles.

In reference to Example 15 of Leyland, the examiner continues to assert that sodium lauryl ether sulphate is a compound capable of reasonably generating sulfide ions when reacted with an alkaline material and water; that chlorhexidene gluconate is a compound reasonably capable of generating a peroxide compound; that formaldehyde is a compound reasonably capable of producing a gas in aqueous solution when reacted with an acid, e.g., citric acid. In response, applicants respectfully reiterate that for Beerse, et al., as well as for Leyland, the examiner has not met his burden to establish a proper prima facie case under § 103 by offering facts describing how such reactions would be expected by the skilled person under conditions of cleansing or skin treatment by a user as opposed to bare assertions that they would reasonably occur. Furthermore, it is respectfully submitted that the skilled person would understand that such reactions do not occur under the claimed conditions.

Diec, et al., (US Patent 6,607,733) relates to microemulsion gels based on a microemulsion of the oil and water type in which droplets of the discontinuous oily phase are joined to one another by one or more crosslinking substances and where the molecules are distinguished by at least one hydrophilic region and by at least one hydrophobic region. Zhang, et al., is discussed above. In addition to the arguments of record, applicants respectfully submit that Diec, et al., and Zhang, et al., fail to remedy the deficiencies of Leyland, et al., with respect to setting out a proper prima facie case under § 103(a) for the presently amended claims at least due to the lack of disclosure of a first component and a second component capable of reaction with each other under defined conditions.

35 USC 112 – Second Paragraph

The examiner has rejected claims 1, 3, 4, 5, 6, 9, and 11-16 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The examiner asserts the claim 1 recited the term "and/or" which renders the claimed subject matter indefinite because the word "and" is considered to have a different meaning from the word "or". It is suggested that this specific rejection may be overcome by amending the claim to either delete the term "and/" or the term "/or".

The examiner has rejected dependent claims 3, 4-6, 9 and 11-16 for the same reasons as these claims fail to correct the deficiency of the claim from which they depend,

In response, claim 1 has been amended according to the examiner's kind suggestion.

CONCLUSION

In summary, claim 1 has been amended. No new matter has been added.

In light of the above remarks, applicants submit that the claims now pending in the present application are in condition for allowance. Reconsideration and allowance of the application is respectfully requested. The examiner is invited to contact the undersigned if there are any questions concerning the case.

Respectfully submitted,

Alan A. Bornstein
Registration No. 40,919
Attorney for Applicant(s)

AAB/ss
(201) 894-2180

Data Sheet

October 2001
supersedes issue dated July 2001

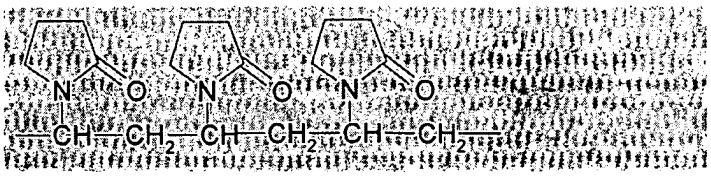
Register 2.1: Setting polymers

Luviskol® K Products

® = Registered trademark of BASF Aktiengesellschaft

Polyvinylpyrrolidone for cosmetic and industrial applications

Structural formula



Chemical structure

Homopolymers of vinylpyrrolidone

INCI name

Polyvinylpyrrolidone (PVP)

CAS-No.

9003-39-8

Range

Luviskol K 17 powder
Luviskol K 30 powder
Luviskol K 30 solution ca. 30 %
Luviskol K 60 solution ca. 45 %
Luviskol K 80 powder
Luviskol K 85 CQ solution ca. 20 %[a)]
Luviskol K 90 powder
Luviskol K 90 solution ca. 20 %

[a)] The solution is preserved with Cosmocil CQ

Appearance

The aqueous solutions are clear and colorless to slightly yellowish. The powder products are white.

Odor

Slight intrinsic odor

Solubility

The Luviskol K products are nonionic vinylpyrrolidone homopolymers with various molecular weights.

The powder products are soluble both in water and in a large number of organic solvents such as alcohol, amines and chlorinated hydrocarbons (≥10 % of solids). In common esters, ethers, hydrocarbons and ketones, however, the polymers are insoluble.

Combinations with customary nonionic, cationic or anionic compounds and also with polyacrylates, polyquats, salts, acids and bases are possible.

Further information is given under Technical Information.

Specifications	K value (1 % in water[0])	Solids content (%)	Viscosity Brookfield RVT (mPas)	pH of the 5 % strength water solution	Content of NVP (%)
Method	02/0086.00	02/0087.00	02/0088.00	02/0089.00	02/0090.00
Luviskol K 17 powder	15.0-19.0	95.0-100.0	-	3.0-7.0	≤0.01
Luviskol K 30 powder	27.0-33.0	95.0-100.0	-	3.0-7.0	≤0.01
Luviskol K 30 solution (ca. 30 %)	27.0-33.0	29.0-31.0	-	7.0-9.0	≤0.01
Luviskol K 60 solution (ca. 45 %)	52.0-62.0	44.0-46.0	-	7.0-9.0	≤0.05
Luviskol K 80 powder	74.0-82.0	95.0-100.0	2500-7000[3]	5.0-8.0	≤0.01
Luviskol K 85 CQ solution (ca. 20 %)	83.0-88.0	19.0-21.0	5000-15,000[2]	7.0-9.0	≤0.01
Luviskol K 90 powder	88.0-96.0	95.0-100.0	10,000-30,000[3]	5.0-9.0	≤0.01
Luviskol K 90 solution (ca. 20 %)	90.0-98.0	19.0-21.0	10,000-40,000[4]	7.0-9.0	≤0.01

[0] The K value of Luviskol K 17 powder is determined in 5 % aqueous solution
[1] Spindle 6/100 rpm/23 °C, 20 % aqueous solution
[2] Spindle 6/50 rpm/23 °C, telquel (ca. 20 % aqueous solution)
[3] Spindle 7/100 rpm/23 °C, 20 % aqueous solution
[4] Spindle 7/100 rpm/23 °C, telquel (ca. 20 % aqueous solution)

For all of the Luviskol K products given above, the ash content is ≤0.02 % (Method No. 02/0091.00): These values (ash content) refer to the polymer (calc. 100 %). Only random testing is carried out.

Shelf-life/storage

Luviskol K 17 powder and K 30 powder have a shelf life of at least three years in the unopened original packaging below 25 °C.

Luviskol K 30, K 80, K 85 CQ and K 90 K solutions have a shelf live of at least two years in the unopened original packaging below 20 °C (preferably at 4°C).

Note

The data submitted in this publication are based on our current knowledge and experience. They do not constitute a guarantee in the legal sense of the term and, in view of the manifold factors that may affect processing and application, do not relieve processors from the responsibility of carrying out their own tests and experiments. Any relevant patent rights and existing legislation and regulations must be observed.

BASF Aktiengesellschaft
Strategic Marketing Cosmetic Ingredients
67056 Ludwigshafen

BASF